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# Code of Conduct between landlords and tenants for commercial rents

## Frequently Asked Questions

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## Why was this Code developed?

The Programme for Government commits to “*Create a code of conduct between landlords and tenants for commercial rents*”, in recognition of the difficulties caused by the pandemic

Following engagement across the Government system and with key stakeholders representing both commercial landlords and tenants, a voluntary Code of Conduct has been drafted based on similar experiences and codes in other jurisdictions, including Australia and the U.K.. The aim of the Code is to facilitate discussions between landlords and tenants impacted by COVID-19.

This Code is part of a wide variety of measures the Government has put in place to assist firms through the crisis. The Government has put in place a comprehensive package to help businesses during the pandemic including the Employment Wage Subsidy Scheme (EWSS), the COVID-19 Restrictions Support Scheme (CRSS), Small Business Assistance Scheme for COVID (SBASC), the Business Resumption Support Scheme (BRSS), low-cost loans, the deferral and warehousing of tax liabilities and the waiver of commercial rates. Many of these alone, or in combination, can be used to assist in the payment of commercial rents if needed.

## What are the main points of the Code?

The Code acknowledges that landlords and tenants have a common interest in working together to enable businesses to keep operating.

The Code sets out that parties should act in good faith and in an honest and transparent manner. It suggests that tenants seeking new arrangements should be clear as to why assistance is needed. Landlords should provide concessions where they can and, where this is not possible, should set out clearly the reasons for this. It lists some of the issues to consider when determining the impact on a business and the need for concession and also some suggested options for new arrangements.

## When does the Code expire?

A decision was made to extend the Code from its initial expiry date of 31 July 2021 until 31 December 2021. It has **now been extended further until 30 April 2022**. The Department of Enterprise, Trade and Employment will keep the Code under review and determine if there is a need for any additional extensions.

## **Why should commercial tenants and landlords observe the Code?**

This is a voluntary code. It does not change the underlying legal relationship or lease contracts between the commercial landlord and the tenant.

However, under common law, every individual has a duty of care to other individuals / entities to not act in a way that causes harm. This duty of care should be considered by commercial landlords and tenants, and any steps that may reasonably be taken to prevent the harm associated with the spread of COVID-19 relating to the occupation, ownership and management of the premises should be considered.

Nobody wants to see premises left vacant on our high streets or our shopping centres. Landlords should be willing to do what they can to help their tenants to continue to operate rather than facing the risk of a vacant premises and inability to obtain new tenants. Tenants should appreciate landlords often have their own financial obligations and so should make every effort to pay what they can and to communicate with their landlord when difficulties arise. Both parties should be sympathetic to the needs and concerns of the other.

The best thing for landlords and tenants to do is to keep lines of communication open and together reach a mutually satisfactory arrangement.

It should be noted, however, that as the relationship between landlord and tenant is a legal matter, parties may wish to seek legal advice when deciding new arrangements.

## **What about alternative dispute resolution mechanisms?**

The Code recognises that there will be cases where landlords and tenants have followed the principles set out in the Code but have been unable to reach a specific agreement. However, both might still feel that a negotiated outcome could be achieved. The Code suggests the alternative dispute resolution mechanisms, as per the existing commercial lease agreement between both parties, could be exercised.

The Code also notes that a third-party mediator could be employed to help facilitate negotiations if both parties are agreeable to this. The cost of any such mediation should be proportionate and with the understanding both sides would bear their own costs. A list of accredited mediators can be found on The Law Library website [here](#).

The Code also clearly states that any mediation process should not prolong or hinder the enabling of amicable resolution outcomes.

## **What about service charges? Why are they included in the Code?**

While some services, such as cleaning and maintenance, may have been reduced or halted due to public health restrictions and closure of premises, many service charges continue to be incurred by commercial landlords or property management companies.

It is important that buildings continue to be insured and safely-maintained so that they are ready to aid the economy's recovery after the COVID-19 crisis. As any service charge and insurance charge payable under the lease is not profit-making, unless otherwise agreed, such charges need to be paid in full.

However, recognising the impact this may have on tenants' finances, concessions may be agreed between both parties in relation to service and other charges. The Code sets out options for consideration in this regard. For example, it suggests that any reduction in statutory charges (e.g. local authority rates) or insurance should be passed on to the tenant in the appropriate proportion applicable under the terms of the lease. At the same time, the Code also acknowledges that in some cases there may be additional service costs required, e.g. in order to operate a building which complies with health and safety requirements in the context of COVID-19.

Again, the best thing for landlords and tenants to do is to keep lines of communication open and ensure the other party is updated on any changes in relation to service and other charges.